IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 766.

DOROTHY BAILEY, *Appellant*,

v.

SETH W. RICHARDSON, ET AL.

MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild respectfully moves this Court, pursuant to Rule 27, paragraph 9, of the Rules of Court, for leave to file a brief as *amicus curiae*. Consent of the attorneys for the Appellant was requested but refused, making futile a request to the Solicitor General.

The interest of the National Lawyers Guild and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

The National Lawyers Guild is a nation-wide association of lawyers having as one of its primary objectives the pres-

ervation and strengthening of the basic rights and liberties guaranteed by the Constitution of the United States. In furtherance of this objective, its members and its committees and conventions endeavor to keep abreast of and to study and analyze significant developments and trends in the area of civil liberties and civil rights. On many occasions, where the issues raised in pending litigation seem of sufficient import, The National Lawyers Guild prepares and files briefs as *amicus curiae*. In so doing it attempts to bring to the attention of the courts, both state and federal, the viewpoint of a very considerable body of attorneys who believe that it is peculiarly the function and the privilige of lawyers to use their professional training to safeguard essential democratic processes.

This case is of obvious importance. Now for the first time, over three years since its promulgation, the constitutionality and mode of operation of the so-called "Loyalty Order", Executive Order 9835, are before this Court. The issues presented, while of overwhelming personal concern to the appellant, Miss Dorothy Bailey, are also of crucial significance to the vitality of certain constitutional guarantees as we have hitherto known them.

The National Lawyers Guild believes, that in a proceeding of such great moment, its views merit consideration. Specifically it seeks authorization to file a brief as *amicus curiae* devoted to the discussion of three propositions:

1. The loyalty board procedure involves the making of determinations directly affecting rights and interests of inestimable value. These rights and interests are no less than the ability and opportunity of an individual to earn a living and to live in an American community without being subjected to discrimination, threats, and obloquy. In the present state of the world and the resulting climate of opinion in this country, these basic rights are every bit as vital to the person concerned as liberty and property. The truth never quite catches up with false accusation or, for that matter, with hasty or ill-advised actions of a loyalty board. It is therefore essential that loyalty procedures

meet the standards of administrative due process established by this Court under the Fifth Amendment to the Constitution.

2. The provisions of Executive Order 9835 authorizing the Attorney General to designate certain organizations as "totalitarian, fascist, communist or subversive", which designations become part of one of the standards by which "loyalty" or "disloyalty" is determined by "loyalty boards", is contrary to the requirements of administrative due process. These provisions of Executive Order 9835 represent perhaps its most novel contribution to administrative procedure. The effect is obvious: A person may be found to be "disloyal" on the basis of membership in or association with an organization. But in the hearing leading to such a determination, the person has no opportunity to contest the designation of "subversive" placed upon the organization concerned. That designation has already been made, ex parte, by the Attorney General.

3. The restrictions on the rights of freedom of thought, freedom of speech, and freedom of assembly imposed by Executive Order 9835 drastically impair not only the rights of individuals as citizens but also the powers of those individuals as electors and governors. All too frequently the basic guarantees of the First Amendment are viewed only as part of a Bill of Rights. Yet an appreciation of the requirements of democratic government requires that these guarantees likewise be regarded as essential conditions for the very functioning of the government itself. Where those guarantees are infringed, democratic governmental functions are impaired, since the citizens, whose opinions, arguments, and meetings are all a vital part of the governing procedure itself, are prevented from thinking, speaking and assembling freely. To limit free speech is thus to gag not just citizens viewed as the possessors of rights but the very people who must be able to speak their minds in their role as voters and citizen-governors.

The National Lawyers Guild cannot be certain, of course, that these points will not be adequately discussed by counsel for appellant. It can only represent to the Court that it does not believe that these three points are fully presented or argued in appellant's Petition for Certiorari.

The National Lawyers Guild therefore urges that the propositions of constitutional law it seeks to discuss as *amicus curiae* be considered along with the arguments of appellant's counsel and the able opinion of Circuit Judge Edgerton, dissenting below. If this motion is granted, ten days would be required for the preparation, service and filing of the brief.

Respectfully submitted,

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